IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 200 of 1989
With
CRIMINAL REVISION APPLICATION No. 628 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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STATE OF GUJARAT - Appellant(s)
Versus
NARESHBHAI HARGOVIND & 4 - Opponent(s)

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Appearance :
MT KT DAVE, LD.APP for Appellant(s) : 1,
None for Opponent(s) : 1,
MR YF MEHTA for Opponent(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 16/06/2006

COMMON ORAL JUDGMENT

1.1 Heard Mr.K.T. Dave, learned Additional Public Prosecutor, appearing on behalf of the

appellant-State and Mr.Y.F. Mehta, learned counsel appearing for the respondent nos.2 to 5. The Revision Application filed by PW-Chandrakant son of orig.complainant Parsottamdas Patel, being Revision Application No.628 of 1998 is tagged with the present appeal. The Division Bench of this Court (Coram : B.C. Patel and A.K. Trivedi, JJ) while dealing with the same, vide order dated 05th April, 1999 has ordered that :

> "This application is not required to be entertained at this stage. This application be placed along with the final hearing of the appeal."

1.2 In view of above background, this Court will have to deal with and decide the acquittal appeal preferred by the State and the Revision Application preferred on behalf of the real victim.

2.1 On careful reading of the proceedings, it is clear that the appellant-State of Gujarat has

failed in serving the process of the present appeal though ample opportunity was accorded to the State to serve the process and lastly, the Division Bench of this Court (Coram : R.A. Mehta and N.J. Pandya, JJ) vide order dated 23rd October, 1991, ordered that the name of respondent no.1 be struck off. Necessary endorsement is there on the first page of the paperbook as well as on the causelist. Undisputedly, the respondent no.1-orig. Accused no.1-Naresh Hargovind was the main culprit, as per the case of the prosecution and it is alleged that he had committed theft of movable property i.e. gold ornaments and scrap, etc. from the house of the complainant and thereafter, he had sold these valuables to number of persons. Four of them after investigation came to be chargesheeted with the orig.accused and they are present respondent nos.2 to 5. It is also the case of the prosecution that some of the articles have been recovered from the witnesses sited by the Investigating Agency in the chargesheet filed

against total five accused persons. The accused persons were charged for the offence punishable under Sections 457, 380, 114 and 414 of the Indian Penal Code. But it is clear from the charge that was framed against the accused by the learned trial Judge and the contents placed before the Court along with the papers of investigation (Report under Section 173 of the Code of Criminal Procedure, 1973) that the accused no.1 was mainly facing charge of offence punishable under Sections 457 and 380 of the Indian Penal Code and rest of the accused persons were joined as accused as abettor of the offence punishable under Section 380 of the Indian Penal Code and also for one more independent offence that they had committed punishable under Section 414 of the Indian Penal Code.

2.2 It would be beneficial to give a look on the facts that were placed before the learned trial Judge. The accused no.1-Naresh Hargovind had developed some acquaintance with the family of

the complainant and he was learning work of goldsmith staying with the complainant in his family. He was residing with PW-Chandrakant Patel and was also taking food with him. Because of unrest in the City of Ahmedabad in the year 1985, the complainant as well as the accused were working at the residence of the complainant and it is alleged that therefore the accused no.1 was aware about the place where the primary gold, other scrap and the gold ornaments were kept in a wooden cupboard. It is alleged that the complainant had prepared one drawer inside the wall. So a person shall have to open the wooden cupboard first and then a locker which was prepared inside the wall. It is also the case of the prosecution that the gold ornaments of the wife of PW-Chandrakant Patel as well as his mother were also kept in the same cupboard. On 14th June, 2006, the gold ornaments, primary gold as well as scrap worth Rs.99,000/- were found stolen and, therefore, the complainant lodged a complaint on 15th June, 1985. On 19th April, 1986, the accused-Naresh

Hargovind was caught by the police and the complainant was informed. The orig.accused was residing with the family of PW-Chandrakant and had knowledge about the place where the valuables were kept. The wife of PW-Chandrakant was keeping a bunch of keys so it was, as per the case of prosecution, possible to prepare a duplicate key, and really he took this advantage.

3. On the strength of the clues given by the accused and the evidence tendered by the complainant, five accused persons came to be chargesheeted. The learned Judicial Magistrate First Class after trial acquitted all the accused. This order is under challenge before this Court by way of appeal as well as Revision Application filed by orig. complainant Chandrakant Patel. It is also argued that the finding recorded by the learned trial Judge is erroneous and, therefore, requires to be reversed. Mr.Dave has taken me through the oral as well as

documentary evidence and the mode of recovery of muddamal articles including gold ingots. According to Mr.Dave, learned Additional Public Prosecutor, the learned trial Judge ought to have accepted the versions of Kantaben Exh.100 and Balubhai Danabhai Ex.102. The witnesses examined by the prosecution to whom the accused had sold the ornaments ought to have been believed. There was ample evidence to show that the stolen ornaments and ingots have been recovered by the police at the instance of the accused and the findings recorded in the judgment and order of acquittal, therefore, should be held to be illegal and perverse.

4.1 On the other hand, Mr.Y.F. Mehta, learned counsel appearing for the respondents-accused has submitted that there is no legal, satisfactory evidence to link the respondents-accused with the crime so far as the offence punishable under Sections 114 and 414 of the Indian Penal Code is concerned. There is no

other eye-witness in the matter and the learned trial Judge has correctly appreciated the evidence of various panchas drawn by the police while recovering the muddamal articles.

4.2 The evidence led by the prosecution witness does not carry the case of the prosecution any further and practically all the witnesses have proved the fact of theft committed and/or the recovery of muddamal. Mr.Y.F. Mehta, learned counsel appearing for the respondents-accused, has drawn my attention on one decision, which was referred to by the learned trial Judge reported in 29 (2) GLR 1057, wherein this Court has observed that as to the use of evidence collected by way of drawing panchnama. It is held by this Court that panchnama cannot be used as a substantive basic evidence and such evidence is only useful as corroborative use of evidence. It is the submission of Mr.Mehta that the said panchamas are nothing but recovery panchnama and there is no element of discovery within the meaning of Section 7 of the Indian

Evidence Act. Even if it is held that recovery was genuine, then also the present respondent in absence of original respondent on.1 now should not be convicted or held responsible as an abettor at least. There is ample scope that because of old acquaintance, the complainant even might not have tried seriously to serve the copy of the same to the present accused and only with a view to pressurise the respondents from whom certain muddamal was recovered by the police, so that the complainant can conveniently get the muddamal articles, which are lying before the Court. The learned trial Judge has appreciated the oral evidence led by prosecution and it is also appreciated that some of the prosecution witnesses have not supported the case.

5. It is not necessary to rewrite the decision of acquittal assigning independent or separate reasons and this Court if is in agreement with the reasons assigned by the learned trial Judge for acquitting the accused can adopt the

reasons assigned by the learned trial Judge. The evidence of recovery of various muddamal articles as well as deposition of the complainant, PW- Kusumben Chandrakant Patel and evidence led by Police Sub Inspector Vaghela and Police Inspector Kantipuri Chhaganpuri as well as Police Inspector Shri Thakor have been rightly appreciated. The panchnamas drawn under Section 27 of the Indian Evidence Act have been appreciated in the background of the legal aspects, which were placed before the learned trial Judge. There are no elements of either perversity or illegality in the decision. The learned trial Judge while concluding the trial with the judgment and order of acquittal has acted cautiously as to disposal of the valuable lying before the Court as muddamal.

6. The Court has observed that this is not a case wherein the Court can dispose of the muddamal articles to the rival claimants in exercise of powers vested with the Court under Section 452

of the Code of Criminal Procedure, 1973 and, therefore, the learned trial Judge has held that so far as the disposal of the muddamal is concerned, there shall be a detailed inquiry and the muddamal be disposed of in terms that may be decided by the Court at the end of the inquiry. So according to me, the finding recorded by the learned trial Judge is absolutely legal and the same is not required to be interfered. Merely because the original accused-Naresh was once working with the complainant and he had developed acquaintance. It would not be either safe or legal for the Court to hold that he had successfully arranged for duplicate keys and had taken away the properties worth Rs.99,000/- on 14th June, 2006. It is not the case of the prosecution that the accused was caught with muddamal in couple of hours from the date of the complainant and in such a fact situation in absence of orig.accused no.1 reversal of the acquittal order qua the other accused i.e. respondent nos.2 to 5 herein is not found

warranted.

7. The reasons recorded by the learned Judge are logical and there is no element of perversity or patent illegality. The Apex Court in a decision in the case of ***Dwarkadas v. State of Haryana, reported in (2002) 1 SCC 204***, has reiterated the principles of law where it has been held that the judgment and order of acquittal normally should not be reversed merely because the other view is possible. In the same way, the observations of the Apex Court in the case of ***Kanshiram v. State of Madhya Pradesh (Re.Para-21), reported in AIR 2001 SC 2902,*** in respect of appeal against the order of acquittal, positively would help the accused. As per the settled legal position, while appreciating the order of acquittal, the Court should go slow in reversing the order of acquittal unless the order is absolutely illegal and perverse. In view of the ratio of the above cited decisions, there is no merit in the present Criminal Appeal and the same is required to be dismissed.

8. For short, I do not find any merit in the present Criminal Appeal as well as the Criminal Revision Application preferred by PW-Chandrakant Patel, son of orig. complainant Parsottamdas Patel and both, Criminal Appeal and Criminal Revision Application, are hereby dismissed.

9. Before parting with the order, the learned Sessions Judge, Ahmedabad (Rural) is hereby directed to entrust the inquiry as to disposal of the muddamal lying at present with the Court being Criminal Case No.1412 of 1986, to the learned Judicial Magistrate First Class or any other Judge having some experience of dealing with the muddamal queries where the facts are complicated and he shall see that the muddamal inquiry is conducted as expeditiously as possible. The complainant and the witnesses who are the victims of the crime as per the case of the prosecution may be served specifically and this Court may be

intimated about the outcome of the muddamal inquiry. This exercise shall be undertaken and completed within a period of six months from the date of receipt of writ of this Court.

(C.K. Buch, J)

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